

U.S. Department of Justice

*United States Attorney
Eastern District of New York*

TM:NMA/SEF

271 Cadman Plaza East

Brooklyn, New York 11201

February 17, 2012

By ECF

Ronald Fischetti, Esq.
Phyllis A. Malgieri, Esq.
747 Third Avenue, 20th Floor
New York, NY 10017

Re: United States v. Badalamenti, et. al
Criminal Docket No. 12-050 (S-1) (CBA)

Dear Counsel:

The government writes in response to your letters of February 13, 2012 and February 14, 2012, attached hereto as Exhibits A and B, respectively.

First, your contention that the government falsely "accused [you] of violating a protective Order" is not accurate. Instead, the government inquired about the origin of the FBI 302 reports in your possession, as follows:

Judge, the third thing is that I saw Mr. Fischetti reading from 302s that appear to have been marked with 3500 number and I believe that there were 302s turned over at one of the Persico trials and that 3500 material is subject to a protective order. So I would like to know -- I would like him to identify for me what case those materials are related to, so that we may continue to look into it as I saw him reading from them just now here today.

See 2/13/12 Hearing Tr. at 18 (attached hereto as Exhibit C).

Second, your contention that no protective order governs those materials is misleading. In fact, the materials were subject to an agreement among the parties that the materials be provided only to the lawyers on the case, as well as their employees and agents. See Letter from T. Siegel dated January 22, 2006, United States v. Spataro, et al., 04 CR 911 (S-1) (SJ) (Docket Entry No. 140, attached hereto as Exhibit D). Your

possession of such documents is contrary to that non-disclosure agreement and the government requests that you return the documents, and any other documents governed by the agreement, promptly.

Third, your contention that government counsel denied being present during the execution of a search warrant at the defendant's social club is not true. Indeed, you advised the government at the defendant's initial arraignment that you were in possession of video and photographs of government counsel at that search. The government hereby requests that you provide copies of any such videos or photographs in your possession, custody or control pursuant to your reciprocal Rule 16 obligations.

Fourth, with respect to your request for certain details of the circumstances of the search, the government directs you to the affidavit underlying the search warrant and affidavit, both of which have previously been produced to you.

Very truly yours,

LORETTA E. LYNCH
United States Attorney

By: /s/
Nicole M. Argentieri
Stephen E. Frank
Kristin Mace
Assistant U.S. Attorneys

Attachments

cc: Defense counsel (by ECF)